U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-99-222-52758 Office: California Service Center Date: MAR 7 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(i)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a ballroom dance studio. The beneficiary is a professional ballroom dancer. The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, seeking P-1 classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the "Act") as an internationally recognized athlete. The petitioner seeks to employ the beneficiary as a competitive ballroom dancer in order that she may compete in the National Dance Council of America ("NDCA") competition circuit for a period of approximately two years.

The director denied the petition in a decision dated November 30, 1999. The director found that the petitioner failed to establish that the beneficiary reached the requisite level of international acclaim, failed to submit required evidence of experience and/or acclaim in the sport, and failed to submit an employment contract.

On appeal, counsel for the petitioner submitted a written brief arguing that evidence submitted demonstrates that the beneficiary qualifies as an internationally recognized athlete under the pertinent regulations. Additional documentation was submitted.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
>
> (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

8 C.F.R. 214.2(p)(1)(ii) provides for P-1 classification of an alien:

> (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

8 C.F.R. 214.2(p)(3) states that:

> *Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

8 C.F.R. 214.2(p)(4)(ii)(B) requires that a petition for an internationally recognized athlete or athletic team must include:

> (1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport if such contracts are normally executed in the sport, and
>
> (2) Documentation of at least two of the following:
>
> (i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;
>
> (ii) Evidence of having participated in international competition with a national team;
>
> (iii) Evidence of having participated to a significant extent in a prior season for a U. S. college or university in intercollegiate competition;
>
> (iv) A written statement from an official of the governing body of the sport which details how the alien ... is internationally recognized;
>
> (v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien ... is internationally recognized;
>
> (vi) Evidence that the individual ... is ranked if the sport has international rankings; or
>
> (vii) Evidence that the alien ... has received a significant honor or award in the sport.

On appeal, counsel for the petitioner submitted several attestations, including one from the current U.S. national champion, affirming that the beneficiary has international acclaim and recognition in the sport. The record also contains a consultation from the NDCA affirming that the beneficiary has international standing in the sport.

The director's stated concern stemmed, in large measure, from the fact that the beneficiary had received awards as a dance "couple,"

rather than as an individual athlete. The attestations submitted on appeal addressed this concern. In the attestation from Jonathan Wilkins, U.S. Ballroom Champion, it was explained that while professional ballroom dancing is performed by two-person dance couples, these teams are not considered permanent in the sense of "teams" in other sports and that the sport of competitive ballroom dancing is considered one comprised of individual athletes.

After careful review of the record, it must be concluded that the director's objections have been overcome. In considering the unique nature of the sport of professional ballroom dancing, its athletes may be considered as individuals or as teams depending on the circumstances. P-1 classification is available to either individual athletes or members of athletic teams. 8 C.F.R. 214.2(p)(4)(i). The fact that dance competitions are performed by teams/couples is not adverse to the beneficiary qualifying as an individual athlete.

The petitioner here has clearly established that the beneficiary satisfied more than two of the criteria set forth at 8 C.F.R. 214.2(p)(4)(ii)(B)(2), specifically subsections (ii), (iv), (v), (vi), and (vii). Therefore, the petitioner has shown that the beneficiary is an internationally recognized athlete and that she seeks admission in order to compete in her sport.

Finally, the record reflects that specific contracts are not the norm in the sport, but that the petitioner has adequately specified the terms of employment. There are no other known adverse factors pertaining to this petition.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.